APPENDIX A.

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM, 1966 — APRIL SESSION, 1967

No. 16080
THOMAS A. MCMANIGAL,
Plaintiff-Appellant,
v.
SEYMOUR SIMON, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JULY 21, 1967

Before SCHNACKENBERG, CASTLE and FAIRCHILD, *Circuit Judges.*

CASTLE, *Circuit Judge.* Thomas A. McManigal, plaintiff-appellant, prosecutes this appeal from orders of the District Court denying his motion to vacate a previous order of the court dismissing his amended complaint, and denying his subsequent motion that the District Court notify the Chief Judge of this Court to designate two other judges to serve as members of a three-judge court to hear and determine plaintiff's action.

Plaintiff's amended complaint sought declaratory and injunctive relief against the defendants-appellees, the members of the Board of Commissioners of Cook County, Illinois, and the State's Attorney of Cook County, respectively. Jurisdiction of the District Court was predicated on 28 U.S.C.A. §1343 and 42 U.S.C.A. §1983, §1985

and §1988, and the amended complaint requested the convening of a three-judge court as provided under 28 U.S.C.A. §2281 and §2284.

From our examination of the record we conclude that the District Court lacked jurisdiction of the plaintiff's action. Accordingly, we affirm the orders appealed.

Plaintiff's amended complaint sought to have declared invalid a resolution of the Board of Commissioners of Cook County authorizing the Board's president to enter into a proposed contract with the Chicago Law Institute and sought to restrain the defendants from commencing any state court action to cancel a March 11, 1958 agreement between the County and the Institute under which the law library of the Institute was to be housed in the Cook County Court House for a ten year period expiring April 4, 1968, in exchange for free access to the library by the judges of courts of record and certain designated county and city officers.

The complaint alleges, *inter alia,* that plaintiff is a "stockholder-member" of the Chicago Law Institute, and sues on behalf of himself and all other such members; that the Chicago Law Institute is an Illinois corporation created February 18, 1857, by a special Act of the Illinois legislature; that the corporation succeeded an earlier unincorporated not-for-profit association formed to provide for the exchange of law books between the organizers; that pursuant to contracts renewable every ten years the Institute has been furnished space in the Cook County Court House to house its law books "in return for which the Corporation's charter, Section 6, secured to all Federal and State judges of courts of record 'the free access to, and the full and entire use and enjoyment of the said library and all the privileges and advantages thereof free of expense under the same rules and regulations as may be provided by the by-laws of the said Corporation for the proprietors or shareholders thereof' "; that the current contract expires April 4, 1968; that with the completion of the Civic Center, to which the Cook County courts were removed, the law library of the Institute was moved August 12, 1966, to that location contrary to the desires of some 600 of the Institute's approximate 1400 members; that prior thereto the defend-

ant Board of Commissioners of Cook County by resolution authorized its president to execute a proposed contract with the Institute providing for the donation of the Institute's law library to the County and that the Institute and the County jointly seek state court approval of such contract; that the Institute's executive committee voted like authority to the Institute's president; that such contract was executed, state court approval sought, a final decree entered July 13, 1966, approving the contract, and an appeal therefrom taken by certain of the Institute's members; and that plaintiff and other members of the Institute have a pecuniary interest in the Institute, and thereby an interest in its assets including the unexpired agreement of March 11, 1958.

The complaint asserts that, by reason of the acts of the defendants, the plaintiff and other shareholder members of the Institute have been denied due process of law, denied equal protection of the laws, and deprived of the equal right to own and defend their property, all in violation of the Constitution of the United States, and all under color and pretense of law; that the Institute and its stockholder members have suffered great and irreparable damage, injury and loss of property, and have no adequate remedy at law, and may be deprived of their right to sue for damages for breach of the March 11, 1958, agreement unless defendants are restrained from instituting state court action to cancel, annul, or terminate that agreement; and that the plaintiff and other members will be deprived of their pecuniary interest in the March 11, 1958, agreement without due process of law unless the defendants are so enjoined.

In its essence plaintiff's complaint shows simply a dispute between some members of the Institute and its governing body, the executive committee, with respect to whether the corporation should donate its law library to the county, coupled with the claim of the plaintiff to a pecuniary interest in the current contract between the Institute and the County under which the books were housed in the County Court House and from which they have been removed to the new location of the courts in the Civic Center pursuant to the agreement for donation.

This Court has pointed out (*Ream* v. *Handley*, 7 Cir., 359 F. 2d 728, 731) that there is controlling authority to the effect:

> ". . . that the civil rights statutes, of which §1983 is one, do not confer jurisdiction where a person seeks only to protect property or monetary rights. *Holt* v. *Indiana Manufacturing Company*, 176 U.S. 68, 72, 20 S.Ct. 272, 44 L. Ed. 374 (1900); *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496, 531, 59 S.Ct. 954, 83 L. Ed. 1423 (1939); *Abernathy* v. *Carpenter*, W.D. Mo., 208 F. Supp. 793, 794 (1962) aff'd 373 U.S. 241, 83 S.Ct. 1295, 10 L. Ed. 409 (1963)."

We perceive no allegation of injury to the plaintiff which is redressable in the federal right of action furnished by either §1983 or §1985[1] and therefore cognizable in the District Court by virtue of 28 U.S.C.A. §1343. Consequently, the District Court did not err in dismissing the amended complaint. It was without jurisdiction.

And, there is no doubt that a single district judge, where a three-judge court is requested, may consider the question of his own jurisdiction in an appropriate case. *Stamler* v. *Wills*, 7 Cir., 371 F. 2d 413, 414 footnote 3; *Lion Manufacturing Corporation* v. *Kennedy*, D.C. Cir., 330 F. 2d 833. Moreover, plaintiff does not seek to restrain "the enforcement, operation or execution of any State statute" within the meaning of 28 U.S.C.A. §2281, and therefore denial of a three-judge court was proper on this independent ground. *Ex parte Collins*, 277 U.S. 565, 566-569; *Pierre* v. *Jordan*, 9 Cir., 333 F. 2d 951, 956-957.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

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[1] 42 U.S.C.A. §1988 furnishes no independent cause of action cognizable under §1343. It relates to procedure and remedy.

APPENDIX B

Constitutional Provisions, Statutes And Ordinances Involved.

A. *Resolution by Board of Commissioners of Cook* Co., Printed in its Journal of Proceedings December 11, 1962:

"WHEREAS, the Public Building Commission of Chicago has recommended that the County of Cook establish a PUBLIC law library in the new Civic Center; and

"Whereas, The Chicago Law Institute has been asked to donate its library collection to the proposed Cook County Law Library; and

"Whereas, on November 30, 1962, the President of the Board of Commissioners of Cook County, in a letter to the President of the Chicago Law Institute, submitted the following proposal:

1. The name of the law library shall be the Chicago Law Institute Library, thus preserving traditions respected by all the members of the Bar.
2. The law library shall be available to all members of the bar AND to THE PUBLIC generally.
3. An advisory board of nine members, composed of lawyers admitted to practice before the Supreme Court of the State of Illinois, shall be established. The Deputy Court Administrator of Cook County shall be a member, two-thirds of the members shall be named initially by the MEMBERSHIP of the Chicago Law Institute, and the JUDGES of the Circuit Court of Cook County shall elect the other two members. The advisory board shall establish the policy for the operation and maintenance of the law library, which shall be directed by a professional law librarian.

4. Withdrawal privileges shall be extended to all lawyers admitted to practice before the Supreme Court of Illinois and to those members of the public demonstrating financial responsibility.
5. Cook County shall assume ownership of the library collection of the Chicago Law Institute PRIOR to its being moved to the Civic Center.

"NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Cook County concur in the proposal of the President submitted to the Chicago Law Institute on November 30, 1962; and BE IT FURTHER RESOLVED that, if it is NOT feasible for the Chicago Law Institute to move its library collection to the new Civic Center, that it is the INTENTION of the Board of Commissioners of Cook County to allow the Chicago Law Institute to REMAIN IN THE SAME LOCATION WITHIN THE COUNTY BUILDING." (italics supplied).

B. *The Laws of the Illinois Legislature for 1963,* p. 2441, sec. 1 amended as of August 6, 1963, as the result of the introduction and sponsorship, in June, 1963 of House Bill 1199 by Senator Donald J. O'Brien, spokesman for the Chairman of the Public Buildings Commission of Chicago (the Mayor of Chicago), The County Law Libraries Act, 1965 Ill. Rev. Stats., ch. 81, sec. 81, to read as follows:

"The county board of any county may establish and maintain a county law library, to be located in any county building at the county seat of government. The term 'county building' shall include premises leased by the county from a public building commission created pursuant to the Public Building Commission Act, approved July 5, 1955, as amended.

"The facilities of such library shall be FREELY available to all licensed Illinois attorneys, judges, . . . and to ALL MEMBERS OF THE PUBLIC. . . .

"Each such clerk shall commence such charges and collections upon receipt of written notice from the chairman of such county board that the board has acted under the

provisions of this Act to establish and maintain such a law library.

"Such fees . . . shall be remitted by such clerks monthly to the county treasurer, and by him retained in a special fund designated as the County Law Library Fund . . . in any county having a population of more than 500,000 (counties of 500,000 or less only came under the Act prior to the Amendment in H.B. 1199) inhabitants, the county board shall order disbursements from such fund, and *such county board may appoint a library committee of not less than 9 members* who, by MAJORITY VOTE, may recommend to such county board as to disbursements of such fund and the operation of such library." (italics supplied).

C. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for September 30, 1963, authorizing the President to notify the Clerk of Court of its action to come under the County Law Library Act, as amended, above.

D. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for June 17, 1965, at page 1937:

"June 17, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

Pursuant to authority vested in me by law, I hereby appoint *Thomas F. Allman*; Raymond Canady; *Joseph R. Cecchini*; John W. Daly; Louis J. Gilliberto; Ben Liss; Leo J. Powers; John W. Tuohy; Milton P. Webster to serve as members of the Advisory Board of the Cook County Law Library.

I urge the concurrence of the Cook County Board.

Respectfully submitted,
SEYMOUR SIMON,
President.

"Commissioner Wilson moved that the recommendation be concurred in.

Yeas: Bobrytzke, Bonk, Dolezal, Dunne, Erickson, Fulle, Grupp, Huppert, Piatrowski, Ryan, Sneed, Touhy, Wilson, Simon—14

Nays: None."

E. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for November 23, 1965, p. 3596:

"November 22, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

I transmit herewith an agreement submitted by Robert Cushman, attorney for the Chicago Law Institute, providing for the donation of the library collection of the Chicago Law Institute to the Cook County Law Library.

This agreement has been reviewed by the State's Attorney. He states that the County may *legally* enter into this agreement.

Therefore, I request authority from the County Board to execute this agreement.

Respectfully submitted,
SEYMOUR SIMON
President"

The agreement (which was the same as Exhibit C later attached to the complaint in 65 CH 6863) followed at pp. 3597-3600, the pertinent concluding paragraph of the Resolution reading:

"Commissioner Bonk moved that the recommendation of the President be concurred in, and that the proper officials be authorized to sign the agreement on behalf of Cook County.

Yeas: Bobrytzke, Bonk, Chaplin, Dolesal, Erickson, Fulle, Grupp, Huppert, Piotrowski, Ryan, Sneed, Touhy, Wilson, Simon—15

Nays: None."

F. *U.S. Constitution*:

Art. I, s. 10: "No state shall pass any . . . law impairing the obligation of contracts."

Amendments, Art. IV: "The right of the people to be secure in their . . . papers and effects against unreasonable search and seizure shall not be violated."

Art. V: "No person shall be . . . deprived of LIBERTY or property without due process of law; nor shall any private property be taken for public use without just compensation."

Art. XIV, s. 1: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any state deprive any person of . . . LIBERTY or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

G. *Illinois Constitution*:

Art. IV, s. 20: "The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan, or extend its credit to, or in aid of, any public or other corporation, association or individual."

H. *Federal Statutes*:

1. Title 28 U.S.C. s. 1331. Federal Question; Amount in Controversy:

"(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws . . . of the U.S."

2. Title 28 U.S.C. s. 1343. Civil Rights and Elective Franchise:

"(1) To recover damages for injury to his . . . property, or because of any deprivation of ANY right or privilege of a citizen of the U.S., by ANY act done in furtherance of any *conspiracy* mentioned in s. 1985, Title 42.

"(3) To redress the deprivation, under color of any state law, statute, *ordinance* . . . of ANY right, privilege or immunity secured by the Constitution of the U.S., . . . for equal rights of citizens or of all persons within the jurisdiction of the U.S."

3. Title 42 U.S.C. s. 1983. Civil Action for Deprivation of Rights.

"Every person who, under color of any statute, *ordinance* . . . of any State . . . subjects or causes to be subjected, any citizen of the U.S. . . . to the deprivation of ANY rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an . . . suit in equity."

4. Title 42 U.S.C. s. 1985. Conspiracy to Interfere With Civil Rights.

"(2) . . . if 2 or more persons conspire for the purpose of impeding, hindering, obstructing or defeating, in any manner, the due course of justice in any State . . . with intent to deny to any citizen the equal protection of the laws, or to injure him or his PROPERTY for lawfully enforcing, or attempting to enforce, the right of any person, or *class of persons,* to the equal protection of the laws."

5. Title 28 U.S.C. c. 151. Declaratory Judgments.

"s. 2201. *Creation of Remedy* "In case of actual controversy within its jurisdiction . . . any court of the U.S., upon filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is or could be sought.* Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

"s. 2202. *Further Relief.* Further necessary or proper relief *based on a declaratory judgment or decree* may be granted, after reasonable notice and hearing against any adverse party whose rights have been determined by such judgment."

6. Title 28 U.S.C. s. 2281. Injunction Against Enforcement of State Statute; three-judge court required.

"An . . . injunction restraining the enforcement, operation or *execution* of any State *statute* by restraining the action of any *officer* of such State in the enforcement or execution of such statute . . . shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under sec. 2284 of this title."

7. Title 28 U.S.C. s. 2284. Three Judge District Court.

"(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall IMMEDIATELY notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to *hear* and *determine* the action or proceeding."

8. Title 28 U.S.C. s. 2283. Stay of State Court Proceedings.

"A court of the U.S. may not grant an injunction to *stay* proceedings in a State court except . . ."